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LETTER DATED 5 APRIL 1995 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit to you herewith the Hague Declaration on the Lockerbie case issued at the close of the round-table meeting convened from 28 to 30 March 1995 with the participation of prominent legal experts in the field of international law.

I should be grateful if you would have the text of this letter circulated as a document of the Security Council.

(Signed) Mohamed A. AZWAI
Permanent Representative

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Annex

[Original: English]

The Hague Declaration on the Lockerbie Case

The ARAB LAWYERS UNION,
The ARAB JURISTS UNION,
The Libyan Bar Association and
the General Syndicate of Libyan Attorneys,

convened a Round Table Meeting, with the participation of prominent legal experts in the field of international law from five continents, on March 28th, 29th and 30th 1995 in The Hague, The Netherlands, the Seat of the International Court of Justice and during this Decade of International Law proclaimed by the United Nations General Assembly. The Round Table was devoted to an examination of the Lockerbie case in light of the general rules of international law, the Montreal Convention for the Suppression of Unlawful Interference with Civil Aviation (1971) and the United Nations Charter.

The participants strongly condemned all acts of international terrorism, and in particular all forms of violence or intimidation directed against international civil aviation for any reason. The participants condemned in the strongest terms possible the bombing of the Pan Am jet over Lockerbie Scotland in December 1988, and offer their support to the families of the victims. The families of the victims have the right to know the truth about who was really responsible for this atrocity. Nevertheless, the accusations that two Libyan nationals were responsible for the bombing of the Pan Am jet over Lockerbie remain unsubstantiated, unproven and unconvincing. Both the United States and the United Kingdom have refused to come forward with any evidence as required by Articles 11 and 12 of the Montreal Convention.

A new world order respectful of the rule of law in international relations requires that all Members of the United Nations Security Council act in conformity with the principles of international law and the applicable procedural rules, as required by the Charter. In particular, legal disputes must not be politicized by the Permanent Members of the Security Council.

Security Council resolution 748 (1992) and resolution 883 (1993), imposing sanctions on Libya, both of which are based upon resolution 731 (1992), have exceeded the powers of the Security Council under article 24, paragraph 2 of the United Nations Charter and are therefore ultra vires the competence of the Security Council.

As the Security Council and its members are fully aware of a serious legal dispute concerning the interpretation and application of the 1971 Montreal Convention, the Council, in accordance with article 36, paragraph 3 of the Charter, must urge the parties involved to resolve all outstanding issues before the International Court of Justice, rather than to proceed with a process leading away from the peaceful settlement of the dispute.

Whatever the factual situation may be, the United States and the United Kingdom remain obliged to exhaust all means for the peaceful resolution of the Lockerbie dispute with Libya under article 2, paragraph 3 and article 33, paragraph 1 of the United Nations Charter, and as called for by the League of Arab States, Organization of African Unity, the Islamic Conference Organization and the Non-Aligned Movement.

As part of the peaceful settlement of the dispute, the concerned parties should agree to submit the question of personal criminal responsibility of the two suspected Libyan nationals to a criminal tribunal headed by a Scottish Judge and meeting at the Seat of the International Court of Justice as recommended by the League of Arab States in Resolution No. 5373 (27 March 1994).

The two suspected Libyan nationals have a basic human right under international law to a fair trial before an impartial tribunal with full transparency and publicity of the proceedings. They have already compromised their legal rights by agreeing to the above-mentioned proceeding.

Libya has discharged its obligations under the Montreal Convention by instituting a criminal investigation against these two Libyan nationals. Article 7 of the Montreal Convention makes it quite clear that a contracting State such as Libya has the option either to extradite or to prosecute its two nationals. Hence, under the Montreal Convention, Libya has no obligation to extradite them to either the United States or the United Kingdom. Moreover, there are no extradition treaties between Libya, on the one hand, and the United States and the United Kingdom, on the other. Therefore, there is no obligation for Libya to extradite its two nationals to the United States or the United Kingdom under general international law. Moreover, Libyan national law explicitly prohibits extradition of Libyan nationals to a foreign country and this provision is deemed to be of the public order nature.

The Security Council sanctions against Libya have inflicted severe harm upon the Libyan people in violation of fundamental norms of international human rights law and treaties. These sanctions against the Libyan people must be suspended immediately and ultimately removed.

We call on the Member States of the United Nations Organization to convene a special session of the General Assembly in order to consider the Lockerbie case in all of its aspects and to encourage a peaceful resolution of this serious international dispute in accordance with the requirements of international law. We call upon the General Assembly to exercise its powers under the Charter by establishing an International Committee of Investigation into the Lockerbie incident so that the truth of this matter may be objectively determined to the satisfaction of the entire world, and especially to the families of the victims.

In order to achieve the above objectives, the participants have requested the organizers to create a follow-up Committee which will decide upon practical steps to implement the terms of this Declaration, and to meet with the Secretary-General of the United Nations, the aforementioned international organizations, ICAO, the concerned national parliaments and other NGOs concerned with the questions of international law, terrorism, human rights, and the safety of international civil aviation, as well as with the families of the victims.